

June 3, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File Nos. **L04P0018 & L04SH012**
Proposed Ordinance No. **2005-0146**

MARAVISTA

Preliminary Plat and Shoreline Management Substantial Development Permit Applications

Location: Between South 352nd Street and Lake Geneva, west of 42nd Avenue South

Applicant: 9560 Partners/Novastar Development,
represented by **Tom Barghausen**
Barghausen Consulting Engineers
18215 – 72nd Avenue South
Kent, Washington 98032
Telephone: (425) 251-6222
Facsimile: (425) 251-8782

Intervenor: R. Hart and Carol Ann Miller and
The Lake Geneva Coalition,
represented by **R. Hart Miller**
35011 – 42nd Avenue South
Auburn, Washington 98001
Telephone: (253) 874-6376

King County: Department of Development and Environmental Services,
represented by **Kim Claussen** and **Bruce Whittaker**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
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SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Approve with conditions
Approve with conditions
Approve with conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	April 28, 2005
Hearing Continued Administratively:	April 28, 2005
Hearing Closed:	May 12, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Developer:	9560 Partners/Novastar Development 18215 72 nd Avenue South Kent, WA 98032 425-251-6222
Engineer:	Barghausen Consulting Engineers 18215 72 nd Avenue South Kent, WA 98032 425-251-6222
STR:	22-21-04
Location:	The site is located between South 352 nd Street and Lake Geneva, west of 42 nd Avenue South
Zoning:	R-4
Shoreline Environment:	Urban
Acreage:	10.42 acres
Number of Lots:	42
Density:	Approximately 4.12 units per acre
Lot Size:	Approximately 3,888 – 7,200 square feet in size, with one lot approximately 3 acres
Proposed Use:	Single Family Detached Dwellings
Sewage Disposal:	Lakehaven Utility District
Water Supply:	Lakehaven Utility District
Fire District:	King County Fire District No. 39
School District:	Federal Way School District
Application Completeness Date:	October 27, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES testimony are found to be correct and are incorporated herein by reference.

3. Applicant 9560 Partners/Novastar Development filed a preliminary plat application to subdivide 10.42 acres into a now-revised 42 lots. The roughly L-shaped property lies on the south shore of Lake Geneva and also fronts the north side of South 352nd Street and the west side of 42nd Avenue South (across from the *Lake Geneva Park 04* subdivision neighborhood). The stub end of South 348th Street terminates on the west boundary near Lake Geneva. The site terrain in the southern half of the property consists generally of a moderate to gradual drop to the west-northwest from the 42nd Avenue South frontage; in the northern portion, there is a gradual descent generally to the north to Lake Geneva. No wetlands are onsite (the wetland assessment in this case has not shown to be in error by objectors; there is no evidence in the record which demonstrates that the property itself is encumbered by wetlands). Two wetlands lie just offsite adjacent to the western boundary, and a Class 3 stream (a ditched drainage course) runs along the west boundary of the site before entering the property in the far northern portion and meandering north-northeasterly to empty into Lake Geneva.
4. Access to the interior of the subdivision and the development lots will be provided by a public road extending westerly from the 42nd Avenue South frontage, from which would branch two relatively short cul-de-sacs to the north and south. 41 of the 42 lots would be served by that road system; Lot 42, a large lot encompassing an existing residence and outbuildings in the northern portion on the Lake Geneva waterfront, would be served by a driveway access from the South 348th Street stub terminus in the northwest corner of the site. In addition to frontage improvements on 42nd Avenue South, from which the development would take direct access, the Applicant has offered to install frontage improvements on the South 352nd Street frontage as well. (All internal and external road improvements would conform to City of Federal Way standards, which the Applicant has offered voluntarily.) The Applicant has also offered to install an extruded curb separation on the north side of South 352nd Street from the project frontage westerly to the intersection with 37th/38th Avenues South for school pedestrian safety enhancement; to install a streetlight at the development entry onto 42nd Avenue South; and to repair and/or replace as appropriate the six-foot high wood fence on the perimeter of the adjacent Hart and Carol Miller property, through which a drainage course will be culverted and routed westerly as part of the improvement of existing drainage conveyances through the development west to the abutting Class 3 stream.
5. The northern portions of the site on Lake Geneva lie within an Urban Environment shoreline as designated by the King County Shoreline Management Master Program (adopted pursuant to the Shoreline Management Act (SMA); Chapter 90.58 RCW). The Applicant has requested a Shoreline Management Substantial Development Permit for relatively routine underground utility line installations through the designated shoreline portion of the site. Such installation is permitted by KCC 25.26.260 and is shown to conform to applicable shoreline regulations.
6. The lot sizes and locations proposed are permissible under King County Code. Despite concerns of neighboring property owners/residents about what they feel is a “loophole” allowing higher density concentration than is desirable, it is not impermissible under the code for the area of the larger Lot 42 to be fully credited in the calculation of allowable overall lot yield.
7. The projected vehicular traffic distribution is not shown to be in error as claimed by concerned persons; in any case, a distribution which was weighted more heavily toward directing vehicles via South 349th Street to the east toward 51st Avenue South/Military Road¹ rather than to South 352nd Street and westerly would not change traffic mitigation requirements. The proposal

¹ Thought more accurate by area residents for trip projection purposes, but of concern in practical effect because of the undesired impact of increasing traffic on that route.

conforms to County traffic impact mitigation standards. As part of the mitigation, the Applicant proposes to correct sight distance limitations caused by vertical curvature (a hump) on South 352nd Street along the property frontage and the intersection with 42nd Avenue South, and also some horizontal alignment limitations (curvature) on 42nd Avenue South where it curves to the northeast along the northern portion of the 42nd Avenue South frontage.

8. The Examiner accepts the DDES rationale (submitted during the continuance) regarding the code compliance of the recreation tract location in this case, particularly given the relatively smaller size of the subdivision, the tract's convenient and safe accessibility, and good separation from vehicular traffic. The Applicant has also demonstrated that the necessary road frontage percentage can be achieved.
9. The Examiner has no authority to require perimeter fencing on the 42nd Avenue South frontage, where double frontage lots will be developed (Lots 9-11). The privacy and visibility concerns of neighbors about the rear elevations of residences on those lots will be taken care of somewhat by the topographical difference between the proposed site elevations in that area and the elevation of 42nd Avenue South (the lots will be somewhat lower than the roadway).
10. Sanitary sewer service will be provided to the proposed lots by extension of a Lakehaven Utility District main. Service to other properties in the area by the main extension is not a matter under the Examiner's authority, but is subject to District service policies and specifications.
11. The proposal conforms to the development drainage standards applicable under county code. Concerns about high water table and saturated soils are issues which will be addressed in the subdivision construction plan review and individual building permits.
12. Concerns about soil stability have been expressed, but there is no persuasive evidence that there are geologically hazardous areas onsite. Standard subdivision construction and building permit reviews will address any structural instability problems which may arise; none have been shown to date.
13. There is no authority in this case for requiring preservation of significant trees onsite; this application is not subject to such requirements.

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4 zone.²

² One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or general fears of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass'n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The evaluation of the application must therefore be based upon officially adopted county ordinances, plans and policies, and state law, as well as legally accepted principles. And the legislative wisdom of state and county lawmakers must be respected "as is" in deciding the application, since policy decisions are the province of the legislative branch. A quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on April 27, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.
5. Subject to the conditions imposed below, the proposed location of utilities within the Urban Environment shoreline on the property is consistent with the goals, policies and objectives of the County's Master Program and the SMA.
6. Also as subject to the conditions imposed below, the utility installation in the shoreline is consistent with applicable shoreline regulations set forth in Title 25 KCC.

DECISION:

Shoreline Permit

The Shoreline Management Substantial Development Permit for the utility placement in the proposed *Maravista* subdivision is approved subject to the following conditions of approval:

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. **TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090).** The following requirements shall apply to all permits.
 - a. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean the time limits established are reasonable related to the time actually necessary to perform the development on the ground and complete the project that is being permitted and/or are necessary for the protection of shoreline resources.

- b. Where neither local government nor the department include specific provisions establishing time limits on a permit as part of action on the permit, the following time limits shall apply:
 - i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
 - ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
 - iii. The effective date of a shoreline permit shall be the date of the last action required on a shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval's. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
 - iv. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, that an alternative compliance limit may be specified in the permit.
 - v. Revisions to permits under WAS 173-27-100 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
 - vi. Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.
- 5. Construction shall occur in conformance to the project plans and information received by King County on October 29, 2004.
- 6. Construction waste shall be recycled or disposed of at an appropriate upland disposal facility outside of shorelines, sensitive areas and their buffers.
- 7. An approved temporary erosion and sediment control plan (TESC) shall be required prior to building permit approval.

8. Use of beach material for construction purposes is prohibited
9. No petroleum products or other deleterious materials shall enter surface waters.
10. Any subsequent changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
11. If required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish and Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.
12. If required, a U.S. Army Corps of Engineers Permit shall be obtained from the U.S. Army Corps of Engineers prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit.
13. Erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of concrete, cement, water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
14. A copy of the approved shoreline plans and any necessary revisions shall be kept onsite at all times during construction.
15. Upon project completion, the King County Environmental Scientist assigned to this project (Nick Gillen – 206-296-7141) shall be contacted to complete a compliance inspection.
16. Within 30 days after completion of the work, at least six (6) photographs taken from different directions shall be provided to DDES Shorelines.

Preliminary Plat

The preliminary plat of the *Maravista* subdivision, as revised and received April 27, 2005, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. The applicant must obtain final approval from the King County Health Department, if existing septic or wells, if any, are to be abandoned.

5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
8. The drainage facilities shall meet the requirements of the 1998 King County Surface Water Design Manual (KCSWDM). Level 1 Flow Control and Basic Water Quality menu are required according to the KCSWDM.

An existing driveway culvert on Lot 42 shall be evaluated for capacity at engineering plan submittal. The culvert shall be upsized as required with the construction of this subdivision.

The existing drainage course entering the site at Lot 33 shall be adequately conveyed through the site. Note that a conceptual plan has been submitted to DDES for this improvement.
9. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):
 - a. Road A shall be improved at a minimum to the urban subaccess street standard.
 - b. Both of the Road B internal access roads (from Road A) shall be improved at a minimum to the urban minor access street standard.

- c. FRONTAGE: The frontage along S. 352nd Street shall be improved to the urban neighborhood collector standard. This S. 352nd Street improvement will require re-grading of the existing road to achieve stopping and entering sight distance. Note that a conceptual plan has been submitted to DDES for this improvement.
 - d. FRONTAGE: The frontage along 42nd Ave S shall be improved at a minimum to the urban subcollector standard.

The frontage improvements along 42nd Ave S. may require full width overlay per section 4.01F of the KCRS.
 - e. Modifications to the above road conditions may be considered according to the variance provisions of Section 1.08 of the KCRS.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 13. There shall be no direct vehicular access to or from South 352nd Street from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
 14. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the final plat.
 15. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking, and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
 16. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- c. Buffer averaging may be proposed, pursuant to K.C.C. 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- d. A minimum building setback line of 15 feet shall be required from the edge of the tract.
- e. Fencing: A 4-foot high split-rail fence and signs shall be located along the outer boundary of the wetland buffers (i.e. Sensitive Area Tracts). The fencing and sign details shall be shown on the final engineering plans. Sensitive area signs shall be installed on the fence at 100-foot intervals or as appropriate. The fencing and signs shall be maintained by the abutting lot owners and/or Homeowner's Association as identified on the face of the final plat. (King County Comprehensive Plan Policies E-107, E-134)

Streams

- f. Class 3 stream(s) shall have a minimum 25-foot buffer, measured from the ordinary high water mark (OHWM).
- g. The stream(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- h. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Streams or Wetlands

- i. If alterations of streams and/or wetlands are approved in conformance with K.C.C. 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.
- j. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the

preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
19. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.

- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if South 352nd St and/or 42nd Ave S. are on a bus route, then the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current county fees.

- 20. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval.
 - a. In order to mitigate the impacts of the proposed plat of Maravista at the intersection of South 342nd Street/Military Road, the Applicant shall clear vegetation within the existing Military Road right-of-way to increase visibility of northbound vehicles to the maximum extent possible within the existing roadway right-of-way. This shall include removal of existing ground cover and replacement with a gravel surfacing material underlain by geotextile/filter fabric/'weed block' type material to minimize potential for regret of vegetation into the sight triangle.
 - b. The Maravista plat applicant shall have no responsibility to implement this measure if either (a) the work has already performed/constructed by the Jovita Heights applicant at/prior to the recordation of the Maravista plat, or, (b) the work is scheduled for implementation by the Jovita Heights applicant within 2 years of the date of recordation for the Maravista plat. The Maravista plat applicant may enter into an agreement with the developer to share the costs of this mitigation measure.
- 21. Prior to occupancy of any new residence in the development, an extruded curb walkway separation shall be installed on the north side of South 352nd Street from the project frontage westerly to the intersection with 37th/38th Avenues South for school pedestrian safety enhancement.

22. As part of the subdivision construction, a streetlight (luminaire and necessary operating appurtenances) shall be installed at the development entry onto 42nd Avenue South.
23. As part of the subdivision construction, the portions of the six-foot high wood perimeter fence of the adjacent Hart and Carol Miller property abutting the subject property shall be repaired and/or replaced as appropriate to return/maintain those portions of the fence in sound durable condition.

ORDERED this 3rd day of June, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 3rd day of June, 2005, to the following parties and interested persons of record:

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c/o Novastar Dev., Wayne Potter
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Auburn WA 98001

Robert & Peggy Horton
4409 S 349th St.
Auburn WA 98001

Glen & Valerie Jacobs
34836 - 42nd Ave. S
Auburn WA 98001

Kathy McLean
34805 - 42nd Ave. S
Auburn WA 98001

Andy & Dana Miller
34837 - 42nd Ave. S
Auburn WA 98001

Hart & Carol Ann Miller
35011 - 42nd Ave. S
Auburn WA 98001

James & Donna Miller
3937 S 348th St.
Auburn WA 98001

Bill & Deloise Molden
4444 S 350th St.
Auburn WA 98001

Pat & Mona Moloney
4444 S 348th Pl.
Auburn WA 98001

Geoffrey Nicholls 4210 S 350th St. Auburn WA 98001	Richard & Judy Olson 4452 S 350th St. Auburn WA 98001	Beth & Karl Peeks 35014 - 42nd Ave. S Auburn WA 98001
Stan & Thelma Vander Pol 3923 S 345th St. Auburn WA 98001	Pam Pope 3762 S 349th Pl. Auburn WA 98001	E. Raymond & Y. Baune 32225 46th Pl S Auburn WA 98001
Jack & Carol Roberts 4420 S 348th Pl. Auburn WA 98001	Harry & Barbara Schreiber 4435 S 350th St. Auburn WA 98001	Seattle KC Health Dept. E. Dist. Environ. Health 14350 SE Eastgate Way Bellevue WA 98007
Shirley Sonnenfeld 34901 - 42nd Ave. S Auburn WA 98001	John Thompson 4213 S 349th St. Auburn WA 98001	Beverly Triplett 4217 S 351st Auburn WA 98001
Ted Wells 4425 - 349th St. Auburn WA 98001	Claudia & Dan Willis 4205 S 351st St. Auburn WA 98001	Kim Claussen DDES/LUSD Current Planning MS OAK-DE-0100
Lisa Dinsmore DDES/LUSD MS OAK-DE-0100	Kristen Langley KC-DOT/RSD MS OAK-DE-0100	Mark Mitchell DDES/LUSD MS OAK-DE-0100
Carol Rogers DDES/LUSD MS OAK-DE-0100	Steve Townsend DDES/LUSD Land Use Inspections MS OAK-DE-0100	Bruce Whittaker DDES/LUSD Prel. Review Engineer MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Preliminary Plat

In order to appeal the decision of the Examiner **on the preliminary plat application**, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before June 17, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before June 24, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

Shoreline Substantial Development Permit

This decision may be appealed to the State Shorelines Hearings Board. Requests for review are governed by RCW 90.58.180 and Chapter 461-08 WAC. Information on appeal procedures may be obtained from the Shorelines Hearings Board at (360) 459-6327 or the Washington State Department of Ecology Shorelines Appeals Coordinator at (360) 407-6528. Requests for review by the Shorelines Hearings Board must be received by the Board within twenty-one (21) days of the “date of filing.” The “date of filing” is the date the local decision on the permit is received by the Department of Ecology.

MINUTES OF THE APRIL 28, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NOS. L04P0018 & L04SH012.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker and Kristen Langley, representing the Department; Tom Barghausen, representing the Applicant; Intervenor Hart Miller; and Joe Beal, Cindy Bjorkman, Aaron Colts, Ray Grossruck, Peggy Horton, Valerie Jacobs, Wendy Schonwetter, John Thompson and Ted Wells.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File Nos. L04P0018 & L04SH012
- Exhibit No. 2 DDES Preliminary Report dated April 28, 2005
- Exhibit No. 3 Application dated November 24, 2004
- Exhibit No. 4 Environmental Checklist received November 24, 2004
- Exhibit No. 5 Declaration of Non-significance dated April 1, 2005
- Exhibit No. 6 Affidavit of Posting indicating December 8, 2004 as date of posting and December 10, 2004 as the date the affidavit was received by DDES. Notice of Application
- Exhibit No. 7 Plat Map received April 27, 2005 (Revision)
- Exhibit No. 8 Assessors Maps – NW, SW, NE, NW 21-04-22
- Exhibit No. 9 Conceptual Drainage Plan received December 14, 2004
- Exhibit No. 10 Level 1 Drainage Analysis by Barghausen dated October 1, 2004
- Exhibit No. 11 Revised Level 1 Drainage Analysis by Barghausen dated December 14, 2004
- Exhibit No. 12 Wetland Report by Barghausen dated June 4, 2004
- Exhibit No. 13 Traffic Study by The Transpo Group dated August 2004
- Exhibit No. 14 Addendum TIA by The Transpo Group dated December 10, 2004
- Exhibit No. 15 Walkway Inventory by Barghausen
- Exhibit No. 16 Conceptual Recreation Space Plan by Barghausen received December 14, 2004
- Exhibit No. 17 Letter from Barghausen received April 27, 2005
- Exhibit No. 18 Barghausen response letter to Neighborhood Comments received April 27, 2005
- Exhibit No. 19 John Thompson’s Hand-Drawn Map
- Exhibit No. 20 Email from Kim Claussen to Peter Donahue, Re: Mara Vista revision dated May 12, 2005
- Exhibit No. 21 Proposed changes Re: Recreation Space and Shoreline Permit dated May 12, 2005
- Exhibit No. 22 Email from Kim Claussen to Peter Donahue, Re: Mara Vista correction dated May 12, 2005